

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

October 26, 2001

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Oahu

Amendment to Prior Board Action of August 24, 2001, Agenda Item D-29, Issuance of 150 Leases for Private Residential Noncommercial Piers Pursuant to the Kaneohe Bay Piers Amnesty Program, Kaneohe, Koolauloko, Oahu; Various Tax Map Keys.

BACKGROUND:

On August 24, 2001, under agenda Item D-29, the Board of Land and Natural Resources (Board) approved the issuance of 151 leases for private, residential, non-commercial piers to various applicants under the Kaneohe Bay Piers Amnesty Program. The Board amended staff's recommendation by:

- 1) Requiring a performance bond for all leases, whether by one-time payment or annual lease rent, at \$20 per square foot;
- 2) Making the authorization to amend all prior Board actions from April 12, 2001 on for which Board approved the issuance of a pier lease in Kaneohe Bay subject to approval by the Chairperson and the Department of the Attorney General;
- 3) Instructing staff to hold an informational meeting for all applicants to go over the implementation process;
- 4) Requiring staff to report on the results of the informational meeting; and
- 5) Requiring staff to report back to the Board on the status and process for non-residential piers.

This submittal attempts to address concerns raised at the public informational meeting held on September 27, 2001 and also adds applicants who submitted their requests after the August 24, 2001 meeting.

ANALYSIS:

In response to concerns raised by the pier owners and legislators regarding the performance bond amount, staff researched alternative methods to ensure the removal of the pier at the termination of the lease.

The first alternative is to insert language in the lease document in lieu of collecting a performance bond in the form of cash, certificate of deposit or surety bond. This language would

authorize the Department to record a lien against the property if, at the termination of the lease, the owner does not remove the pier and return the land in good condition. Secondly, the lease should be made to run with the land to ensure that the lease is transferred along with the abutting property, thereby locking in the future owners to the terms and conditions of the lease. Recommended provisions are as follows:

Surrender Provision:

"10. The Grantee shall, at the end of the term or other sooner termination of this easement, peaceably deliver unto the Grantor possession of the premises, together with all improvements existing or constructed thereon or, at the option of the Grantor, Grantee shall remove such improvements and shall restore the premises to its original state, or as close thereto as possible, within a reasonable time and at the expense of the Grantee. If the Grantee does not remove the improvements or restore the premises to the satisfaction of the Grantor, the Grantor may effect such action, including but not limited to, recording a lien on the Grantee's abutting property and the Grantee agrees to pay all costs and expenses for such action. Furthermore, upon the expiration, termination, and/or revocation of this easement, should the Grantee fail to remove any and all of Grantee's personal property from the premises, after notice thereof, the Board may remove any and all of Grantee's personal property from the premises, and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Grantee and the Grantee does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of the easement."

Run With Land Provision:

"xx. The lease described in this instrument is to and shall run with the land and shall be for the benefit and use of the abutting real property described as tax map key no._____."

ADDITIONAL APPLICANTS:

Following the August 24, 2001 meeting, eight more applications for the Amnesty Program were received (see Exhibit A). Staff recommends adding these to the List of Applicants for 55-year pier leases.

RECOMMENDATION:

That the Board amend its prior action of August 24, 2001, agenda item D-29, by:

- 1) Adding the Applicants identified in Exhibit A to the List of Applicants.
- 2) Amending the performance bond requirement to read as follows:
 - a) No performance bond shall be required for applicants

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who pay a one-time consideration for the pier lease.

- b) A performance bond of \$20 per square foot of the leased area shall be required for applicants who pay annual lease rent.
- 3) Amending the standard boilerplate pier lease document for all pier leases to contain the Surrender and Run with the Land provisions set forth above, provided that the Department of the Attorney General may amend the boilerplate pier lease document to ensure consistency with these provisions throughout the document

subject to review and approval by the Department of the Attorney General.

Respectfully Submitted,

/s/

DIERDRE S. MAMIYA
Assistant Administrator

APPROVED FOR SUBMITTAL:

/s/

GILBERT S. COLOMA-AGARAN, Chairperson

Kaneohe Bay Piers Amnesty Program
Applications received after July 13, 2001

No.	TMK	Applicant names shown on the application form
1.	4-4-007:004	Manuel & Tina Manfredi, as Trustees of Revocable Living Trust dated 10/02/97
2.	4-5-047:118	Ronald G.S. Au
3.	4-5-058:036	Brian L. Sadaoka
4.	4-6-001:026	Sean Christopher Martin
5.	4-6-001:030	Bruce & Barbara Anderson
6.	4-7-019:020	Thomas F. Robertson
7.	4-7-019:032	Martha Webb Phillips
8.	4-7-024:030	Caroline, William & John Affonso
9.	4-7-024:031	Caroline, William & John Affonso

[As amended by the Board of Land and Natural Resources]

**D4. AMENDMENT TO PRIOR BOARD ACTION OF AUGUST 24, 2001,
AGENDA ITEM D-29, ISSUANCE OF 150 LEASES FOR PRIVATE
RESIDENTIAL NONCOMMERCIAL PIERS PURSUANT TO THE
Kaneohe Bay Piers Amnesty Program, Kaneohe,
Koolau Poko, Oahu; Various Tax Map Keys**

APPROVED AS AMENDED. The Board amended staff's recommendation by adding Craig Kagawa (TMK: 4-5-58:37) to the additional applicants identified in Exhibit A and by amending item 2) b) to state "a performance bond twice the annual rent shall be required for applicants who pay annual lease rent."